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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Borough of Camp Hill
2145 Walnut Street
Camp Hill, PA 17011

Docket No. CWA-03-2018-0008DN

**ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT**

Proceeding under Section 309 of the Clean
Water Act, 33 U.S.C. § 1319

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (“AOCC” or “Order”), EPA Docket No. CWA 03-2018-0008DN, is issued to the Borough of Camp Hill, Pennsylvania (“the Borough”), under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance sections 301, 302, 306, 307, 318, 402, and 404 of the Act.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized the Pennsylvania Department of Environmental Protection (PADEP) to issue General NPDES Permits.

5. On March 16, 2013, PADEP issued the “NPDES Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) General Permit” (PAG-13), which authorized the discharge of stormwater from small MS4s (“the 2013 Permit”). The 2013 Permit became effective starting March 16, 2013 and expires on March 15, 2018. In order to be eligible for coverage under the 2013 Permit, a regulated MS4 had to submit a Notice of Intent (“NOI”) to PADEP.
6. The Borough timely submitted its NOI for coverage under the 2013 Permit on September 12, 2012. Starting on the effective date of the 2013 Permit, March 16, 2013, the 2013 Permit thereafter authorized stormwater discharges from the Borough’s MS4.
7. Section 309(a) of the Act provides, *inter alia*, that where “the Administrator finds that any person is in violation of . . . any permit condition or limitation implementing [section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title] in a permit issued under section 1342 of this title by [her] or by a State, [she] shall issue an order requiring such person to comply with such section or requirement”. 33 U.S.C. § 1319(a)(3).
8. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2 See also 33 U.S.C. § 1362(12).
9. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. “Municipal separate storm sewer” is defined, in pertinent part, as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes . . . ; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.” 40 C.F.R. § 122.26(b)(8).
11. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . . ; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16). See also 40 C.F.R. § 122.26(b)(17)-(19).
12. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), a small MS4 must obtain an NPDES permit where such a permit is required pursuant to 40 C.F.R. § 122.32.

13. 40 C.F.R. § 122.32(a)(1) requires a permit if the “small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.”
14. The latest Decennial Census, conducted in 2010, includes Harrisburg, Pennsylvania as an urbanized area; the Borough is located within the Harrisburg urbanized area.

III. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

15. The Borough is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
16. At all times relevant to this AOCC, the Borough owned and/or operated a regulated small MS4, located in the Borough of Camp Hill, Pennsylvania.
17. The Borough’s MS4 discharged storm water into the Susquehanna River, Cedar Run, and Conodoguinet Creek (collectively, the “Camp Hill Receiving Waters”), which constitute “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as that term is defined at 40 C.F.R. section 122.2.
18. Storm water discharges from the Borough’s MS4 to the Camp Hill Receiving Waters are permitted only in accordance with the terms and conditions of a NPDES permit.
19. The Borough’s MS4 constitutes a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The 2013 Permit at Part A.2.a requires permittees to “implement, enforce and report on the Stormwater Management Program (SWMP) as set forth in Appendix A. . .” It specifies that “[t]he SWMP as set forth in Appendix A of this permit contains DEP’s approved approach for satisfying each of the six [Minimum Control Measures (MCMs)]. The SWMP in Appendix A describes each MCM and the permit requirements, including BMPs and measurable goals. Permittees operating under this General Permit shall implement the SWMP in Appendix A in its entirety.” 2013 Permit at Part A.2.c (emphasis in original).
21. MCM #5 from Appendix A requires the permittee to “[d]evelop a written procedure that describes how the permittee shall address all required components of this MCM.” 2013 Permit, Appendix A, at p. 9 (BMP #1).
22. MCM #6 from Appendix A requires the permittee to “[d]evelop, implement, and maintain a written operation and maintenance (O&M) program for all municipal operations and facilities that could contribute to the discharge of pollutants from the regulated small MS4s.” 2013 Permit, Appendix A, at p. 12 (BMP #2).

23. MCM #6 from Appendix A requires the permittee to “[d]evelop and implement an employee training program” that contains certain requirements. 2013 Permit, Appendix A, at p. 13 (BMP #3). The 2013 Permit also requires the permittee to provide that training to “[a]ny municipal employee or contractor” at least annually and to document the training in writing – “[d]ocumentation shall include the date(s) of the training, the names of the attendees, the topics covered, and the training presenter(s).” 2013 Permit, Appendix A, at p. 13 (BMP #3).
24. EPA and its representatives conducted an inspection of the Borough’s MS4 program on October 2-3, 2014. During the inspection, EPA personnel requested documentation regarding the Borough’s implementation of its MS4 program. The Borough subsequently provided the requested documentation.
25. EPA personnel prepared an inspection report based on its investigation, which included the inspection, a review of the documentation provided, and other relevant information; EPA sent the Borough a copy of the inspection report on February 4, 2015.
26. On or about March 3, 2015, the Borough provided to EPA a written response to EPA’s inspection report.
27. The Borough neither admits nor denies the findings of fact and conclusions of law contained or referenced in this AOCC.
28. The Borough admits the jurisdictional allegations contained in this AOCC and agrees not to contest EPA’s jurisdiction to issue and enforce the terms of this AOCC.

IV. CONCLUSIONS OF LAW (VIOLATIONS)

29. Based upon the EPA’s inspection and investigation of the Borough’s MS4 program, described in Section III above, EPA determined that the Borough had not developed a written program for inspection of post-construction stormwater management BMPs (“PCSM BMPs”) or a complete inventory of PCSM BMPs as required by the 2013 Permit, Appendix A (MCM #5 BMP #1).
30. Based upon the EPA’s inspection and investigation of the Borough’s MS4 program, described in Section III above, EPA determined that the Borough had neither fully developed or implemented a written operation and maintenance (O&M) program nor ensured that BMPs were in place at municipal facilities to eliminate or minimize pollutant discharges to surface waters as required by the 2013 Permit, Appendix A (MCM #6 BMP #2).

31. Based upon the EPA's inspection and investigation of the Borough's MS4 program, described in Section III above, EPA determined that Respondent was unable to provide documentation of complete and appropriate stormwater training being provided at least annually as required by the 2013 Permit, Appendix A (MCM #6, BMP #3).
32. The failures described in paragraphs 29 through 31 above constitute the Borough's non-compliance with certain requirements of its SWMP in violation of the 2013 Permit.
33. Accordingly, for the reasons stated in paragraphs 29 through 32 above, the Borough has failed to comply with the terms of the 2013 Permit and therefore has violated Section 301 of the CWA, 33 U.S.C. § 1311.

V. COMPLIANCE ORDER

Therefore, this 2nd day of November, 2017, the Borough is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and consents to conduct the following activities:

34. Written Program for Inspection of Post-Construction Stormwater Management BMPs. Within sixty (60) days of the Effective Date, the Borough will prepare and submit to EPA the following documents:
 - a. A written program for inspections of PCSM BMPs to be implemented by the Borough that provides the appropriate content and timing for inspections of PCSM BMPs, including but not limited to who is to perform inspections, what data is to be reported and/or documented during and after the inspection, and what records will be kept to document the inspection; and
 - b. A hard copy of the GIS map of the Borough's MS4, showing the location all current PCSM BMPs.
35. Written Program for Inspection of Municipal Stormwater BMPs. Within sixty (60) days of the Effective Date, the Borough will prepare and submit to EPA the following documents:
 - a. A written program for inspections of municipal stormwater BMPs to be implemented by the Borough that provides the appropriate content and timing for inspections of municipal BMPs, including but not limited to who is to perform inspections, what data is to be reported and/or documented during and after the inspection, and what records will be kept to document the inspection. This may be the same document required by paragraph 34(a) above, as long as the document provides all the required information;

- b. The results of an audit to be performed of all municipal facilities to identify existing deficiencies, a plan for necessary BMPs at municipal facilities, and a plan to rectify any identified deficiencies; and
 - c. A hard copy of the GIS map of the Borough's MS4, showing the location all current municipal BMPs. This may be the same map required by paragraph 34(b) above, as long as the map shows all the required information.
36. Training and certification of stormwater compliance staff. To address this issue, the Borough will submit to EPA the following documents:
- a. A copy of the training presentation in PowerPoint format used at the last stormwater training session;
 - b. An attendance sheet identifying the persons attending the last stormwater training session; and
 - c. A list of dates of stormwater training sessions held in 2016 and scheduled for the remainder of 2017.
37. The Borough's failure to complete or comply with any requirement of this AOCC shall be deemed a violation of this Order.
38. All notices and submissions required under this AOCC shall be sent either via mail or electronically to:

Mr. Peter Gold
NPDES Enforcement Branch (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
gold.peter@epa.gov

39. All submissions provided pursuant to this Order shall be signed by the Borough and shall include the following certification pursuant to 40 C.F.R. section 122.22:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

GENERAL PROVISIONS

40. The Borough waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order which the Borough may have with respect to any issue of fact or law set forth in this Order.
41. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.
42. This AOCC addresses only the violations described herein. EPA reserves the right to commence action against any person, including the Borough, in response to any condition not described herein that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.
43. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Borough of its obligations to comply with any applicable federal, state, or local law or regulation.
44. EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order.
45. Violations of the terms of this Order may result in further EPA enforcement action for violations of this Order, and may subject the Borough to the imposition of administrative and/or civil penalties pursuant to 33 U.S.C. § 1319.
46. EPA reserves all existing authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
47. The undersigned representative of the Borough certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOCC and to execute and legally bind that party to it.
48. All of the terms and conditions of this AOCC together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this AOCC, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire AOCC shall be null and void.

VI. EFFECTIVE DATE

49. This Order will become effective upon the Borough's receipt of a fully-executed copy of this Order unless modified or withdrawn.

VII. TERMINATION

50. This Order shall terminate upon the issuance or reissuance, either by EPA or the Commonwealth of Pennsylvania, of an MS4 permit to the Borough or when all conditions of this Order have been met, whichever occurs first.

FOR THE BOROUGH OF CAMP HILL, PENNSYLVANIA

By: _____

Name: _____

Title: _____

Date: _____

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Catharine McManus

Name: Catharine McManus

Title: Acting Director, Water Protection Division
U.S. EPA, Region III

Date: 11/2/2017


VI. EFFECTIVE DATE

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VII. TERMINATION

50. This Order shall terminate upon the issuance or reissuance, either by EPA or the Commonwealth of Pennsylvania, of an MS4 permit to the Borough or when all conditions of this Order have been met, whichever occurs first.

FOR THE BOROUGH OF CAMP HILL, PENNSYLVANIA

By: 
Name: Peter Rohlen
Title: Council President
Date: October 11, 2017

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____
Name: Catharine McManus
Title: Acting Director, Water Protection Division
U.S. EPA, Region III
Date: _____

